

REMARKS

The Examiner has rejected Claims 1, 3, 4, 7, 12-14, 16-17, 20, 25-31, 34, 38-40, and 43 under 35 U.S.C. 103(a) as being unpatentable over Krishnan et al. (U.S. Patent No. 6,075,863), in view of Chi (6,006,329), in view of Lerche et al. (U.S. Patent No. 5,511,163), in view of VirusScan (“User’s Guide, VirusScan for Windows 95”), and further in view of Foss et al. (U.S. Patent No. 6,298,444). Applicant respectfully disagrees with such rejection, especially in view of the amendments made hereinabove to the independent claims. Specifically, applicant has amended the independent claims to at least substantially include the subject matter of former dependent Claim 43.

With respect to the independent claims, the Examiner has relied on Col. 5, lines 16-23 (excerpted below) from the Krishnan reference to make a prior art showing of applicant’s claimed technique “wherein the processor determines whether received packets are of interest, passes the received packets that are not of interest to the end-point computer, and scans the received packets that are of interest” (see this or similar, but not necessarily identical language in the independent claims).

“Additionally, applets may be used to scan incoming data for potentially hazardous programs, such as virus, worm, or Trojan horse programs. These types of programs have the potential to damage both hardware and software resources on host computer 12. By automatically scanning data transferred through modem 10, the modem may discard the offending transfer or may alert the user to a potential rogue program.” (Col. 5, lines 16-23 – emphasis added)

Applicant respectfully asserts that the excerpt from Krishnan relied upon by the Examiner teaches that “[b]y automatically scanning data transferred through modem 10, the modem may discard the offending transfer or may alert the user to a potential rogue program” (emphasis added).

However, automatically scanning data transferred through a modem, and discarding an offending transfer, as in Krishnan, fails to disclose “determin[ing] whether received packets are of interest,” much less applicant’s claimed technique “wherein the

processor determines whether received packets are of interest, passes the received packets that are not of interest to the end-point computer, and scans the received packets that are of interest” (emphasis added), as claimed by applicant. Clearly, automatically scanning data transferred through the modem, as in Krishnan, simply fails to even suggest “determin[ing] whether received packets are of interest, [and] pass[ing] the received packets that are not of interest to the end-point computer,” where “the received packets that are of interest [are scanned]” (emphasis added), as specifically claimed by applicant.

Additionally, with respect to independent Claims 28 and 29, the Examiner has relied on Page 26 from the VirusScan reference to make a prior art showing of applicant’s claimed technique “wherein scanning the received packets that are of interest is prioritized based on a file type associated with the received packets” (see this or similar, but not necessarily identical language in the aforementioned independent claims). Specifically, the Examiner has argued that VirusScan teaches that “certain file types can be chosen for scanning over other file type i.e. the chosen file types have priority over the other file types.”

Applicant respectfully disagrees and asserts that the excerpt from VirusScan relied upon by the Examiner merely teaches that “[t]o check all file types, click the All Files button” and “[t]o only scan executable and Microsoft Word files, select Program Files Only,” where “[i]f you select Program Files Only, you can click the Program Files button to edit the types of files VirusScan will examine” (Page 26 – emphasis added). Further, the excerpt teaches that “[t]o scan files compressed with PKZIP, PKLITE, WinZip, and LZEXE, select Compressed Files” (Page 26 – emphasis added).

However, checking all file types, only scanning executable and Microsoft Word files, and scanning compressed files, where the types of files VirusScan will examine may be edited, as in VirusScan, fails to suggest any sort of “prioritiz[ation] based on a file type,” much less applicant’s claimed technique “wherein scanning the received packets that are of interest is **prioritized** based on a file type associated with the received packets” (emphasis added), as claimed by applicant. Clearly, simply editing the types of

files VirusScan will examine, as in VirusScan, simply fails to even suggest that “scanning... is **prioritized** based on a file type associated with the received packets” (emphasis added), as specifically claimed by applicant.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant’s disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

Applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art excerpts, as relied upon by the Examiner, fail to teach or suggest all of the claim limitations, as noted above. Nevertheless, despite such paramount deficiencies and in the spirit of expediting the prosecution of the present application, applicant has amended independent Claims 1, 14, and 27 to further distinguish applicant’s claim language from the VirusScan reference, as follows:

“wherein scanning the received packets that are of interest is prioritized based on a file type associated with the received packets” (see this or similar, but not necessarily identical language in the aforementioned independent claims).

As argued hereinabove with respect to independent Claims 28 and 29, applicant respectfully asserts that VirusScan teaches checking all file types, only scanning executable and Microsoft Word files, and scanning compressed files, where the types of files VirusScan will examine may be edited, which simply fails to suggest any sort of “prioritiz[ation] based on a file type,” much less applicant’s claimed technique “wherein

scanning the received packets that are of interest is **prioritized** based on a file type associated with the received packets” (emphasis added), as claimed by applicant.

Furthermore, applicant has incorporated the subject matter of former Claim 43 into each of the the independent claims.

With respect to the subject matter of former Claim 43 (now at least substantially incorporated into the independent claims), the Examiner has relied on items 402 and 406 from the Foss reference to make a prior art showing of applicant’s claimed technique “wherein the received packets that are not of interest bypass the scanning” (see this or similar, but not necessarily identical language in the independent claims).

Applicant respectfully asserts that Foss teaches that “[o]nce the system determines the port address, it establishes whether the corresponding protocol is one known or recognized by the mail guard device in step 402,” where “[i]f the protocol is not recognized by the device, the system will send a rejection message or similar notification to the source in step 404 and the process ends” (Col. 5, lines 30-35 – emphasis added). Further, Foss teaches that “if the e-mail corresponds to a known protocol, the system will invoke a rule set containing rules based on the protocol in step 406” (Col. 5, lines 39-41 – emphasis added).

However, establishing whether the corresponding protocol is recognized by the mail guard device, where if the protocol is not recognized by the device, the system will send a rejection message to the source and the process ends, in addition to teaching that if the e-mail corresponds to a known protocol, the system will invoke a rule set containing rules based on the protocol, as in Foss, simply fails to suggest applicant’s claimed technique “wherein the received packets that are not of interest bypass the scanning” (emphasis added), as claimed by applicant. Clearly, sending a rejection message to the source and ending the process if the protocol is not recognized by the device, as in Foss, simply fails to even suggest that “the received packets that are not of interest bypass the scanning” (emphasis added), as claimed by applicant.

Again, applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art excerpts, as relied upon by the Examiner, fail to teach or suggest all of the claim limitations, as noted above. Thus, a notice of allowance or specific prior art showing of each of the foregoing claim elements, in combination with the remaining claimed features, is respectfully requested.

Applicant further notes that the prior art is also deficient with respect to the dependent claims. For example, with respect to Claim 5 et al., the Examiner has rejected the same under 35 U.S.C. 103(a) as being unpatentable over Krishnan, in view of Chi, in view of Lerche, in view of VirusScan, in view of Foss, and further in view of Bonomo et al. (U.S. Patent No. 6,658,562). Specifically, the Examiner has relied on the Abstract and Col. 4, lines 11-21 and 30-41 from the Bonomo reference to make a prior art showing of applicant's claimed technique "wherein the processor is user-configured only after verification of a password." Additionally, the Examiner has stated that "these features are well known in the art and would have been an obvious modification of the system disclosed by Krishnan in view of Chi in view of Lerche in view of VirusScan in view of Foss, as evidenced by Bonomo."

Applicant respectfully disagrees and asserts that the excerpts from Bonomo relied upon by the Examiner merely teach "implementing a basic input/output system ('BIOS') configuration among various BIOS configurations," where "[e]ach of the BIOS configurations includes a different set of BIOS characteristics, such as program setup features security features, and network server features, under which the data processing system is able to run" and further teach that "[a] designation is set within the memory device that directs a processor of the data processing system to select and execute a desired one of the BIOS configurations for a particular type of user" (Abstract – emphasis added). Further, the excerpts teach that "[a]n administrator password may also be required to update or change BIOS configuration 207" (Col. 4, lines 31-32 – emphasis added).

However, teaching that an administrator password is required to update or change a BIOS configuration, that each of the BIOS configurations includes a different set of BIOS characteristics, and that a designation is set within the memory device that directs a processor to select and execute a desired one of the BIOS configurations for a particular type of user, as in Bonomo, simply fails to suggest applicant's claimed technique "wherein the processor is user-configured only after verification of a password" (emphasis added), as claimed by applicant. Clearly, requiring a password to update or change a BIOS configuration, as in Bonomo, simply fails to even suggest that "the processor is user-configured only after verification of a password" (emphasis added), as claimed by applicant.

Again, since at least the third element of the *prima facie* case of obviousness has not been met, a notice of allowance or specific prior art showing of each of the foregoing claim elements, in combination with the remaining claimed features, is respectfully requested.

Still yet, applicant brings to the Examiner's attention the subject matter of new Claims 47-50 below, which are added for full consideration:

"wherein the received packets are of interest based on the associated protocol, a source of the received packets, a timing of the received packets, and contents of the received packets" (see Claim 47);

"wherein the bypassing of the scanning includes bypassing a scanner and random access memory (RAM) of the processor, and communicating directly with a network driver of the end-point computer" (see Claim 48);

"wherein the displaying of the alert includes sending the alert to a user interface driver or the end-point computer" (see Claim 49); and

“wherein the prioritizing of the scanning of the received packets that are of interest based on the file type associated with the received packets includes prioritizing an executable file type before an image file type” (see Claim 50).

Again, a notice of allowance or a proper prior art showing of all of applicant’s claim limitations, in combination with the remaining claim elements, is respectfully requested.

To this end, all of the independent claims are deemed allowable. Moreover, the remaining dependent claims are further deemed allowable, in view of their dependence on such independent claims.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-1351 (Order No. NAI1P056).

Respectfully submitted,
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